Supreme Court, U. S.
FILED
DEC 18 1978
MICHAEL RODAK, JR., CLERK

NO. 78-976

IN THE SUPREME COURT
OF THE UNITED STATES

_____ TERM, 19___

RAYMOND LEE TAYLOR,
Petitioner

VS.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Thomas L. Farris
1610 Oil & Gas Bldg.
Fort Worth, Texas

ATTORNEY FOR
PETITIONER

TABLE OF CONTENTS

Cases Cited Herein.....ii
Introduction.....1
Opinions Below.....1
Jurisdiction.....2
Question Presented.....2
Rule Provision Involved.....2
Statement of Facts.....2
Reasons For Granting The Writ....3
Conclusion.....4
Appendix A.
Appendix B.

CASES CITED HEREIN

United States v. William D. Adams, 566 F.2d 962 (5 Cir. 1978).....4
United States v. Robert Earl Aldridge, 553 F.2d (5 Cir. 1977).....4
United States v. Jerry Lee Hart and Prentice Ray Hart, 566 F.2d 977 (5 Cir. 1978).....4
United States v. Garland H. Lincecum, 568 F.2d 1229 (5 Cir. 1978).....4

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

_____ TERM, 19___

RAYMOND LEE TAYLOR,
Petitioner

VS.

UNITED STATES OF AMERCIA

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

The Petitioner, Raymond Lee Taylor, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the proceeding on November 2, 1978.

OPINIONS BELOW

The formal opinion of the Court of Appeals (App. A., infra) is as yet unpublished.

There was no formal opinion of the District Court. The transcript in that Court is reproduced in Appendix B to this Petition.

JURISDICTION

This Court's Jurisdiction is invoked under Rule 19 of the Supreme Court Rules of Procedure.

QUESTION PRESENTED

Whether Federal Rule of Civil Procedure 11(d) requires the trial judge to personally address the defendant and determine that his guilty plea was "voluntary."

RULE PROVISION INVOLVED

Rule 11(d) of the Federal Rules of Criminal Procedure provides:

> The Court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his attorney.

STATEMENT OF FACTS

Due to the fact that Petitioner pled guilty, the only record made in the trial court in this case was the proceedings

as to entry of his plea and as to the sentencing. The Court specifically asked the Petitioner: "Are you making and entering this plea of guilt of your own free will and accord?" Petitioner answered "Yes, sir." The Court asked Petitioner's attorney: "Mr. Farris, as counsel for the Defendant, in your opinion is this plea of guilty voluntarily and understandingly made?" Counsel's response was that it was voluntarily made and understandingly made. The Court thereby found that Raymond Lee Taylor's plea of guilt was voluntarily made. (See App. B).

The Court of Appeals affirmed the lower court, stating that the trial judge's failure to personally address the Petitioner and determine that his guilty plea was "voluntary", in that he queried whether the plea was made of Petitioner's "own free will and accord," was of no consequence. (See App. A).

REASONS FOR GRANTING THE WRIT

Rule 11(d) of the Federal Rules of Criminal Procedure specifically states the following: Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The honorable Trial Court simply asked the Defendant if he was entering his plea of guilty of his own free will and accord. The court asked the Defendant's attorney if the plea was voluntary. Under Federal Rule 11(d), the court should have addressed the question to the Defendant directly that the plea was voluntary.

Rule 11 mandates that the District Court personally address the Defendant as to the voluntary nature of the plea and the routine questioning on the subject by the Trial Court and of the court appointed attorney gives no assurance or basis for the voluntariness of the plea. The following cases all hold that Rule 11 of the Federal Rules of Criminal Procedure is to be strictly complied with. United States v. Robert Earl Aldridge, 553 F.2d (5 Cir. 1977); United States v. Jerry Lee Hart and Prentice Ray Hart, 566 F.2d 977 (5 Cir. 1978); United States v. William D. Adams, 566 F.2d 962 (5 Cir. 1978); and United States v. Garland H. Lincecum, 568 F.2d 1229 (5 Cir. 1978).

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

Thomas L. Farris

Thomas L. Farris

DATE: 11/30/78

UNITED STATES of America,
Plaintiff-Appellee,

v.

Raymond Lee TAYLOR,
Defendant-Appellant.

No. 78-5259

Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Nov. 2, 1978.

Appeal from the United States District Court for the Northern District of Texas.

Before THORNBERRY, GODBOLD and RUBIN, Circuit Judges.

PER CURIAM:

[1] The defendant contends that the trial judge failed to comply with F.R.Cr.P. 11(d) because he did not personally address defendant and determine that his guilty plea was "voluntary." The judge asked defendant if his plea was made "of his own free will and accord." The choice of different words having the same meaning is of no consequence.[1]

[2] The government's argument that alleged failure to comply with Rule 11

can by only raised by § 2255 is without merit. See U.S. vs. Coronado, 554 F.2d 166 (CA5), cert. denied, 434 U.S. 870, 98 S.Ct. 214, 54 L.Ed2d 149 (1977).

*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. vs. Citizens Casualty Co. of New York et al., 5 Cir., 1970, 431 F.2d 409, Part 1.

1. While we do not base our decision on it, the state asked defense counsel if the plea was voluntary, and he responded that it was. By other questions addressed to defendant and answered by him, the judge established that defendant had been neither threatened, coerced, pressured, or extended promises, and that he was pleading guilty because he was guilty and for no other reason.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA	)
	)
VS.	) NO.CR 4-78-34
	)
RAYMOND LEE TAYLOR	)

TRANSCRIPT OF PROCEEDINGS

APPENDIX B

THE COURT: Are you making and entering this plea of guilty of your own free will and accord?

DEFENDANT TAYLOR: Yes, sir.

THE COURT: Anyone forcing you to plead guilty?

DEFENDANT TAYLOR: No, sir.

THE COURT: Anyone threatened you to cause you to plead guilty?

DEFENDANT TAYLOR: No, sir.

THE COURT: Has any coercion or pressure, including mental pressure, been exerted on you to cause you to plead guilty?

DEFENDANT TAYLOR: No.

THE COURT: Do you make your plea of guilty solely because you are guilty and for no other reason?

DEFENDANT TAYLOR: Yes.

APPENDIX B

THE COURT: Mr. Farris, as counsel for the defendant, in your opinion is this plea of guilty voluntarily and understandingly made?

MR. FARRIS: It is voluntarily made and understandingly made.

THE COURT: All right, is this plea of guilty consistent with your advice to him?

MR. FARRIS: It is, Your Honor.

THE COURT: The Court finds that the defendant, Raymond Lee Taylor's plea of guilty is voluntarily made. The Court finds that the defendant's plea of guilty is knowingly and understandingly made. That is, you understand what you are charged with and the consequences of entering a plea of guilty.

APPENDIX B